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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/876,910      | 06/08/2001  | Weizhong Wang        | P30290US            | 1095             |

7590 03/17/2004  
E. Eugene Thigpen  
Petroleum-Geo-Services  
P.O. Box 42805  
Houston, TX 77242-2805

EXAMINER


MCELHENY JR, DONALD E

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

2857

DATE MAILED: 03/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

|  |  |                                    |   |
|--|--|------------------------------------|---|
| <p align="center"><b>Office Action Summary</b></p> | <b>Application No.</b><br>09/876,910       | <b>Applicant(s)</b><br>WANG ET AL. |   |
|  | <b>Examiner</b><br>Donald E. McElheny, Jr. | <b>Art Unit</b><br>2857            |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15-34 and 38-42 is/are allowed.
- 6) ☒ Claim(s) 1-4, 35, 43 and 44 is/are rejected.
- 7) ☒ Claim(s) 5-14, 36 and 37 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>02-15-2004</u> . | 6) <input type="checkbox"/> Other: ____  |

1. The abstract of the disclosure is objected to because it is too long and not a single paragraph. Correction is required. See MPEP § 608.01(b).
2. The disclosure is objected to because of the following informalities: The references on page 26 to "exhibits A and B" and Rule 37 CFR 1.91 are improper. The rule is in regards to physical models necessitated for an enabling disclosure of an invention, which these statements on page 26 have no bearing or relationship thereto. Cancellation is required in response to this Office action or this application will be held abandoned.

Appropriate correction is required.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000.

Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

4. Claims 1-4, 35, and 43 are rejected under 35 U.S.C. 102(a) & (e) as being clearly anticipated by Padhi et al. (6,178,381).

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 43 and 44 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

These claims' preambles are directed to "seismic data point produced by" and then contain process steps. It is unclear whether these claims are directed to data points per se or the process of producing such, or a product-by-process. Any resultant seismic data per se appears no different and not distinguishable from any other seismic data once results are mapped. Therefore such "data point" cannot per se find basis for invention nor demarcation with respect to the prior art.

7. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

8. Claims 43 and 44 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter and the claimed invention lacks patentable utility.

Claims to data per se are not statutory subject matter under 35 U.S.C. 101.

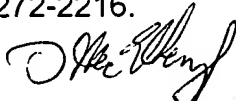
The claimed invention is directed to subject matter which is equivalent to printed matter and other non-functional descriptive material which fails to fall under a category of patentable subject matter. See MPEP 2106, which covers computer implemented inventions and the manner in which they may be claimed and find statutory basis. Note also the Examination Guidelines for Computer-Related Inventions ("Guidelines") referenced therein.

9. Claims 15-34, 38-42 stand allowed.
10. Claims 5-14, 36 and 37 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
11. Berryhill (5,544,126) is cited of background interest.
12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald McElheny Jr., whose telephone number is (571) 272-2218.

Fax transmissions may be directed to (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-3900.

If attempts to reach the Examiner are unsuccessful, the Examiner's supervisor, Marc Hoff, can be reached at (571) 272-2216.

  
**DONALD E. McELHENY, JR.**  
**PRIMARY EXAMINER**